IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 299 OF 2005

Vasantrao Yashwantrao Dorge-Patil & ors. ... Appellants.
Versus.
Nandkumar Gulabrao Dabhade & ors. ... Respondents.

Shri R.S.Apte i/by Shri Mandar Limaye for Appellants.

Shri V.G.Mujumdar for the Respondent No.1.

Mrs.Geeta Mulekar A.G.P. for the Respondents Nos.2 to 4.

CORAM : ABHAY S. OKA, J.

DATED : 1st April, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties.

2. Admit. Shri Mujumdar waives service for Respondent No.1 and the learned A.G.P waives service for the Respondents Nos.2 to 4. Taken up for hearing forthwith.

3. Shri Muzumdar appearing for the Respondent No.1 has tendered an affidavit of the Respondent No.1 which is taken on record and marked as "X" for identification.

The said affidavit reads thus:

"1. I am in exclusive possession of the suit land admeasuring 6 H 47 R's situated at Yavat Station, Taluka Daund, Dist. Pune.

2. Without prejudice to my rights and contentions and subject to final decision of Special Civil Suit No.26/2004 in the Court of the Civil Judge (S.D.) Baramati, I undertake that I will not create third party interests in the suit land and I will not part with possession of the suit land till final disposal of the suit on merits.

3. I will cultivate the suit land and carry out agricultural activities therein myself by engaging labour if necessary. I will take necessary steps to get mutation certified by the Respondents Nos.2 to 4 and to have my name recorded as owner of the suit land in the relevant revenue records."

The learned Counsel appearing for the Appellants states that the Respondent No.1 is not in possession of the suit property and the State Government is in possession thereof. The learned A.G.P. for the Respondents Nos.2 to 4 states that the suit property vests in the State Government and neither the Appellants nor the Respondent No.1 have any right, title or interest in respect of the suit property.

4. The present Appeal arises out of an order passed on Application for temporary injunction at Exh.5 made by the Appellants. Prayers (a) and (b) of the Application for temporary injunction read thus:

> (a) During the pendency of the suit, the Defendant No.1 be restrained by an order of interim injunction from dealing with suit property in any manner whatsoever and/or from creating any sort of third party interest on the same.
>
> (b) During the pendency of the suit, the Defendants Nos.2 to 4 be restrained by an order of interim injunction from mutating the name of Defendant No.1 to the record of rights of the suit property.

5. Shri Apte appearing for the Appellants states that though statements made in the affidavit of the Respondent No.1 as regards possession are totally incorrect, he has no objection if the Appeal is disposed of by directing that the Respondent No.1 will not create any third party interests in respect of the suit property till final disposal of the suit. In so far as the contentions of the Respondents Nos.2 to 4 as regards

the title and possession are concerned, the same will have to be decided at the time of trial or in any other appropriate proceedings.

6. In paragraph 2 of the affidavit of the Respondent No.1 tendered today, he has undertaken not to create any third party rights in respect of the suit property. The said undertaking is accepted.

7. In view of this, the following order is passed:

i) The impugned Judgment and order dated 10th February 2005 is quashed and set aside. The Application at Exh.5 in Special Civil Suit No.26 of 2004 is disposed of by directing the Respondent No.1 not to create any third party interests in respect of the suit property till final disposal of the suit.

ii) All contentions on merits of the suit including the issues relating to possession and title are expressly kept open.

iii) The learned trial Judge will decide the suit on its own merits without being influenced by the observations made in the impugned Judgment and order.

iv) The Appeal is partly allowed in the above terms with no order as to costs.

v) Parties to act on an authenticated copy of this order.

Judge.